

OPEN MEETING AGENDA ITEM

From: *Stacey Champion and Abhay Padgaonkar*
 Date: November 2, 2020
 Docket: APS Rate Review (E-01345A-19-0003); APS Rate Case (E-01345A-19-0236)
 Re: **The Energytools response confirms its findings to be unreliable and must be rejected**

Dear Commissioners:

Thank you for asking Energytools for a written response to our detailed critique of its evaluation. We hope that you will share our profound apprehension that in its response Energytools is doubling down on facts clearly not in evidence, making excuses for major deficiencies in its findings, and vouching for APS and Staff when it is no position to do so. As a result, it confirms our assertion that APS has **not** adequately compensated customers. **We again urge the Commission and the Attorney General to disregard the findings in the Energytools Report because they are unreliable and untrustworthy for the following reasons.**

REBUTTAL OF ENERGYTOOLS RESPONSE

While there isn't enough time to fact-check every misstatement in the Energytools response, we will rebut Energytools' Top-10 most outrageous assertions and point out many still unanswered questions as follows:

1. Why is Energytools defending ACC Staff's Procurement Code violation from which it benefited?

- **What Staff "Thought"?** Why is an out-of-state, 3rd party vendor defending ACC Staff's violation of Arizona's Procurement Code? How would Energytools possibly know what ACC Staff thought and why? How would Energytools know why ACC Staff bypassed the "normal" procurement process?
- **Direct Beneficiary:** We will address Staff's Procurement Code violation in our response to Staff, but the timeline of events proving the violation is already documented in Ms. Champion's April 2020 filing.¹ Suffice it say that we are not about take the word — and neither should the Commission — of a direct beneficiary of Staff's Procurement Code violation at more than **double the price**.
- **Constant Contact:** There were emails, phone calls, document-sharing, and discussions by ACC Staff and **exclusively with** Energytools for nearly a month about **"taking the sole-source route to retaining"** Energytools and **"detailed engagement discussion document."** Don't sole-sourcing efforts and engagement discussions for weeks by ACC Staff — without an RFP and any competing proposals or bids — mean "promise of work"?
- **Inside Track:** The inside track that Energytools enjoyed clearly disadvantaged other bidders, namely Silverpoint Consulting and QSI Consulting, who submitted their bids in good faith — believing that the process wasn't rigged — and without the leg up Energytools had through its month-long collaboration with and coaching from ACC Staff.

2. Why is Energytools still asserting that the tool was not in public use until August 2018?

- Energytools has shockingly ignored documented evidence of customers using the tool on aps.com long

Complaint from Customer B to ACC on December 4, 2017: "I was using their rate plan comparison tool on the APS website too [sic] compare my current plan to the new rate plans that they are encouraging people to switch to. Their tool made it look like some of the new plans would result in costs close to the same as my current plan, but when looking closer they are falsely making them look better than they are. On several months I noticed that it is reporting that my current plan (Combined Advantage 7pm-noon) cost is much higher that [sic] it really is." ... "If people switch plans using this incorrect information, they will not be allowed to switch back because they are on one of the old plans and will be stuck with the newer plans that are much higher."

before August 2018. What more evidence does one need (for example, **Complaint No. 2017 – 147253 in Comm. Kennedy's letter²**) to prove that the customers were not only using the tool in **December 2017**, but

were also filing complaints with the Commission about problems with the Tool and expressing concerns about being **"stuck"** with much higher new plans because of **"this incorrect information"**?

¹ "Stacey Champion's April 14, 2020 filing on ACC Staff's procurement violations" at: <https://docket.images.azcc.gov/E000005910.pdf>

² "Comm. Kennedy's Letter in the Rate Review docket on December 13, 2019" at: <https://docket.images.azcc.gov/E000004091.pdf>

- **Tool Consistently Maintained:** Further, in its update to Comm. Dunn,³ APS has described enhancements made to aps.com to provide information and updated tools designed to inform and assist customers since October of 2016, and has stated that **"APS has consistently maintained a rate comparison tool on aps.com."**
- **FALSE:** Finally, and if all that's not enough, we've received the following statement from **Steve Neil:**

*"Energytools, in its response, maintains that there was not a rate comparison tool on aps.com for ratepayers' use until August 2018. From personal use of the tool at aps.com after I logged into my account prior to April 2018 when I needed to pick a new rate plan, I know this to be **false**."*

3. Why is Energytools ignoring documented evidence of APS's admitted "overstated projections"?

- **Trustworthy?** If Energytools has failed to get basic facts right about *when* the ratepayers had access to the Tool, how credible could its claim be that "Energytools could find no evidence to suggest that the Initial Tool was not providing accurate rate comparison information at that time"?
- **Overstated Projections:** In its Response to Commissioner Kennedy's Letter,⁴ APS admitted the following: "This resulted in **overstated projections that alarmed some customers.**" APS also attached Complaint No. 2017-144731, filed with the Commission on **August 30, 2017**, in which the Tool clearly used inaccurate billing determinants that were very different from those that were actually billed. For example, the Tool used the demand during the **off-peak hour**, which was **12.6 kW** rather than the actual **on-peak** demand of only **4.1 kW** in the August 2017 monthly bill to make projections and provide wrong rate comparisons.
- **Clear Evidence:** The customer's August 2017 bill was \$270 but the prices he was given **based on that usage** for two new plans were \$425 and \$460, which the customer challenged. To overcome the built-in deficiency in the Tool, APS manually had another rate comparison performed utilizing his peak demand of 4.1 kW based on which the "minimal increase" was now only **\$15. What would be the need for APS to perform a manual rate comparison, if the Tool was providing accurate rate comparison?**
- **Evidence Denial:** Despite this very clear evidence, why is Energytools asserting that "there was no evidence that the Initial Rate Comparison Tool was relying on incorrect (shifted) data prior to February 2019"? Why is Energytools still blaming "other reasons" while proclaiming that "these data differences **should not** affect the MEP recommendations provided by the Tool"? Why is Energytools offering an excuse for APS that the Tool was only designed to be "**directional**"? That is news to the ratepayers.
- **Blind Faith:** Why is Energytools placing blind faith in APS's testing files from Phase 1 that had likely rationalized inaccurate billing determinants and normalized "overstated projections." Only after being challenged by Comm. Kennedy did APS admit to providing "overstated projections," the Tool using incorrect billing determinants, and erroneously calculating the bills — not to mention the fact that APS used a manual workaround to sidestep these Tool issues.

4. Although Energytools failed when it "attempted to evaluate" complaints in Comm. Kennedy's letter, why did it declare that the model was functioning properly?

- **A for Attempt, F for Failure:** Are the Commission and the ratepayers supposed to take comfort in Energytools' claim that it "attempted to evaluate the specific complaints enumerated in Commissioner Kennedy's December 13, 2019 letter" but "a lack of data prohibited them" from drawing specific conclusions?
- **Failure to Investigate #1:** Why has Energytools failed to explain why APS had the GridX log data available only after January 30, 2019, but not before?
- **Failure to Investigate #2:** Why has Energytools failed to explain how APS testing handled the incorrect billing determinants and overstated projections?

³ "APS response to Comm. Dunn" at: <https://docket.images.azcc.gov/0000193159.pdf#page=9>

⁴ "APS Response to Comm. Kennedy" at: <https://docket.images.azcc.gov/E000004180.pdf>

- **Failure to Investigate #3:** Why has Energytools failed to explain why APS **manually** had another rate comparison performed if its testing of the Tool was so accurate?
 - **Complicit:** In short, Energytools is not only complicit in APS's attempt to block any serious investigation prior to February 2019, but has also relied on APS's own, self-serving testing files to draw an erroneous conclusion that "the model was functioning properly."
- 5. Why is Energytools still asserting that CSR changes caused no damage before OR after February 2019?**
- **Before Feb 2019:** Based on its faulty assertion in #3 above — and despite evidence to the contrary — Energytools continues to erroneously deny that any problems existed with the Tool before February 2019. As a result, Energytools undercounted any and all damage done by CSRs and more than a million "best rate" letters sent before February 2019, many of which provided incorrect rate recommendations.
 - **What about AFTER Feb 2019?** Energytools has remained silent in its response about CSR changes after February 2019. Energytools has clearly stated that APS only provided data **"for the customer who accessed the GridX tool."** That evidently wouldn't include CSRs who accessed the tool, and, if so, why has Energytools failed to explain how Energytools accounted for incorrect plan changes made by CSRs after February 2019?
 - **Admission:** With its non-response, Energytools has conceded that it failed to account for CSR changes by CSRs.
- 6. Why did Energytools ignore damages from the 'internal' use of the Tool, even if that were to be true?**
- **Internal Use:** Even if it were to be true that APS was using the tool only for "internal use" from August 2017 – August 2018 (which is clearly **not** true according to #2 above), the Tool treating the off-peak 7-8 PM hour as on-peak (according to #3 above), would have negatively affected APS's "internal" results as well.
 - **Wrong Letters:** APS has already admitted that a similar error due to a different reason caused nearly **1 out of 4** "best rate" letters APS sent out in **2019** in compliance of Decision No. 77270 to be **"with incorrect recommendation."**
 - **Wrong Advice:** In short, this "internal" work in Aug 2017-Aug 2018 alone would have meant APS customer service reps gave incorrect rate plan recommendations on a daily basis to countless customers for a whole year and a large percentage of the one million "best rate" letters APS sent were with an incorrect recommendation.
 - **This means that Energytools failed to account for damage caused by hundreds of thousands of "incorrect recommendations" APS provided in 2017-2018 directly via the online Tool, by CSRs on the phone, and through the "best rate" letters.**
- 7. On what basis does Energytools vouch that APS's actions were not "malicious or intentional"?**
- **No Basis:** Unless Energytools was privy to all the retention or engagement agreements and/or addendums and all internal as well as external communication with **GridX, Brattle**, and others, including but not limited to all the documents, emails, encrypted or decrypted text messages, in-person conversations, or any additional form of communication sent/received, meeting minutes, notes, memos, and phone logs within APS related to the Tool, **Energytools is no position to express its "view"** that APS's actions or inactions were not malicious or intentional, especially when evidence shows that APS was told.
 - **Cover for APS?** Why has Energytools failed to account for specific customer complaints to the Commission (Nos. 2019-160008 and 2019-160128) months earlier that had pinpointed major data errors — **including specifically the 2-3 PM data-shift error** — and yet is still covering for APS by erroneously stating that APS "did not have direct information allowing it to recognize this error"? What information did Energytools request, or APS provide, if any, to Energytools about these specific complaints?
 - **Impetus?** It must be noted that APS fixed the errors pointed out in those complaints in the New Tool, according to Energytools. We continue to believe that these errors, which APS was well aware of, prompted APS to start building the New Tool — rather than the pro forma billing requirement ordered

by the Commission on June 27, 2019 being the impetus as claimed by APS and taken at face value by Energytools.)

- **Why Bother?** Why did Energytools bother to conduct an "extensive discovery process" if it believed that "whether and when" APS knew about the data shift error was "not really relevant"?

8. Why is Energytools now asserting it incorporated kWh consumption when it said that it didn't?

- **Damage vs. Impact:** While we appreciate the explanation Energytools has now provided for how it "imputed damages," the word "impute" does not appear in its report even once and the word "damage" appears only six times (and never with respect to damage calculations), whereas the word "**impact**" appears more than 100 times.
- **Reference?** As far as its latest assertion that "kWh assumption is correctly incorporated into the analysis," Energytools fails to reference where in its report it stated what it is claiming now. Instead, the report used the words "impact" and "damage" synonymously and stated the following regarding "**impact**" calculations:

The impact calculations do not include any kWh adjustments, since these shifts are negligible⁶⁹ compared to the bill shifts from the kW impact that occurred.

9. How does Energytools explain the non-residential customer using the "calculator"?

- Why has Energytools failed to respond to evidence in Complaint Number: **2019-158753** filed on June 13,

We would expect that they would move us to the plan that should be the most cost effective based upon our usage profile. As we learned last week, they actually moved us to the plan that was the most expensive to us. I have attached a rate comparison generated off the APS website for our account using our actual plan compared to the other two options. See Exhibit B. The data for 2018 is not valid as this calculator uses a rate plan that is not reflective of what we actually had been on. But the 2019 data is accurate. For the first 5 months of the year, had we been on the XS GS plan our bills would have been \$6,764.02 less. According to Scott in their business group, he indicated that he had never seen an account where the difference was so large between these three XS rate plans.

2019 by an HOA, a non-residential customer, which clearly shows that they used the "**calculator**" and relied on the "**rate comparison generated off the APS website**"?

- On what basis is Energytools asserting that non-residential customer were/are not able to utilize the Tool or some such similar rate comparison mechanism — despite clear evidence to the contrary?

10. Why has Energytools still failed to provide a detailed timeline of software releases dating back to August 2017?

- **No Timeline:** It is hard to fathom that for a software evaluation project costing more than \$200,000, Energytools has still failed to produce a detailed timeline of the Tool's software development, testing, implementation, maintenance, enhancements, bug fixes, and various releases and versions from August 2017 to February 2020. Many outstanding questions would have been answered with the help of a detailed timeline.
- **Independent Evaluation?** There is no indication that Energytools spoke with GridX or Brattle personnel independently or evaluated the agreements or communications between APS and GridX/Brattle. Did Energytools rely only on information, views, and perspectives from APS and fail to triangulate them from non-APS sources?

Given the large number of unanswered questions and failure to present evidence contradicting our rebuttal in the response from Energytools, we urge the Commission to disregard the finding in the Energytools Report, and determine that APS has not adequately compensated customers for all the Rate Comparison Tool errors dating back to August 2017.

From: *Stacey Champion and Abhay Padgaonkar*
Date: November 2, 2020
Docket: APS Rate Review (E-01345A-19-0003); APS Rate Case (E-01345A-19-0236)
Re: **APS is gaslighting the Commission and the ratepayers**

Dear Commissioners:

Thank you for your requests for a written response from APS. We hope that you will share our deep concern about the blanket denials, half-truths, and misstatements in the response by APS.¹ Most disturbing, however, is APS's willful ignorance of documented facts and lack of evidence. As always, a response from APS has raised more questions than it has answered.

Our conclusions about APS's knowledge prior to November 14, 2019 about the data-shift and data integrity errors and the related Tool issues were not careless, random allegations. They were supported by detailed evidence and documented facts. APS's cryptic response is a denial lacking any evidence. It also includes false statements and misrepresentations. We have rebutted APS's **seven** most egregious claims below. You will, no doubt, reach your own conclusions, but please know that if you allow APS to get away with flagrant gaslighting in its response, it will confirm for the ratepayers, once again, that the Commission is not really serious about cleaning up its corrupt past.

REBUTTAL OF THE APS RESPONSE



1. APS is wrong about "correct display" of the usage

APS is denying the plainly obvious while falsely asserting that "the customer's usage was displayed correctly on the website, despite the customer's claims" without any evidence. APS wants us to believe that our eyes are playing tricks on us. However, unless one is color-blind and cannot distinguish between **blue** (off-peak) vs **green** (on-peak), customer's screenshots above prove that the usage was **NOT** displaying correctly — both on the website and in the app. Since the data was indeed shifted by one hour as APS has now admitted, it is not possible that the customer's usage would have been displaying correctly.

2. APS is wrong about the complaint being "unrelated" to the Tool

APS is falsely asserting that Complaint No. 2019-160008 was "unrelated to the Tool issue." That, at best, is a half-truth. While the complaint was not directly about the Tool per se, the complaint and the "Tool issue" had a common cause. The complaint was **related** to the "Tool issue" because the complainant had proved through screenshots that the underlying data was shifted from the **2 PM** off-peak hour (*should have been in blue*) to **3 PM** on-peak hour (and showing as **green**). That is **THE SAME ONE-HOUR DATA-SHIFT ERROR** APS would later admit to being the culprit for the defective Tool providing more expensive rate plan recommendations. In short, the complaint was indeed related to the "Tool issue" because both had **the same common root cause**, which APS knew about long before November 14, 2019. (Ms. Champion had also told APS about errors related to the Tool's reliance on the interval data, which did not match the billed data.)

¹ APS Response at: <https://docket.images.azcc.gov/E000009733.pdf>

THE TIMING OF APS'S PRIOR KNOWLEDGE IS IMPORTANT: Energytools has thrown up its hands claiming that APS's prior knowledge is "not really relevant for damage quantification." However, there is an even more vital issue at stake than damage quantification: **Did APS engage in a deception or cover-up and failed to notify the Commission?** That's why the timing of APS's prior knowledge must be a critical consideration for the Commission.

Commissioner Olson filed a letter² the same day when the rate comparison tool scandal broke. He demanded to know: **"When did APS learn that the rate comparison tool was not functioning accurately? If APS knew about the error prior to Mr. Padgaonkar's filing, why did APS not notify the Commission and why did APS allow the tool to continue to provide customers with inaccurate information?"** All we have after almost a year is APS's blanket denial about its lack of prior knowledge while ignoring the hard evidence we have presented about its prior knowledge. None of the "critical questions" raised by Comm. Olson have been properly investigated — let alone satisfactorily answered to date.

3. APS is wrong about having conducted a "thorough" investigation

APS falsely claims that the original complaint on Slide 11 of the presentation was "thoroughly investigated." APS **never** documented why the displays in the screenshots were showing where the weekday 2-3 PM off-peak hour was in **green** (on-peak) rather than in **blue** (off-peak). Nor has APS presented hourly or daily data — either in the complaint or in its response now — to support its claim about the complainant's "misunderstanding." A blanket denial and declaration of accurate display while blaming the complainant for "misunderstanding" is not a thorough investigation — it is thorough gaslighting.

A "thorough" investigation is in the eye of the beholder. After Ms. McFall summarily wrote off the complainant with a conclusory remark on **September 20**, 2019, Ms. McFall failed to provide any meaningful update to the Commission. Soon after that, the complainant forwarded many screenshots in our filing to Ms. McFall, but received *no response* from Ms. McFall. Frustrated, the complainant wrote back to Roxanne Best at ACC on **September 25**, 2019 and accused APS of falsely representing energy usage data to their customers.

Hello Ms. Best,

I discovered APS falsely representing some of the energy usage data to their customers, in their app and on their website. I provided them clear evidence via email (in detailed, labeled screen shots). I specifically emailed Elizabeth McFall. Neither Ms. McFall or APS in general have responded since that email (last Friday).

The complainant, still ignored by APS, followed up again with Roxanne Best on **October 3**, 2019. She repeated her accusation of APS providing **"falsified data"** and called the ACC investigator **"absolutely not impartial."**

Thank you for providing further clear evidence that you are absolutely not impartial and that you are improperly favoring APS in this case. I look forward to speaking with your supervisor about your inappropriate conduct....and I'm definitely filing a complaint about your conduct now.

Just for the record, I will also contact Ms. McFall back when I am available, but it's not going to resolve anything. How could it? APS can't justify or explain away what they did. They absolutely acted improperly and falsified data. You are treating this like it's some minor billing dispute, not the major issue it is.

That hardly counts as a "thorough" investigation in anyone's eyes.

Other than a denial — completely contradicted by the screenshot evidence — APS has failed to document any meaningful answers to the key questions raised by the Commission in the complaint, namely: 1) "What is the company's response to being charged on peak pricing one hour before on peak hours begin?" or 2) "What daily data information can be provided to the customer for consumption clarification?"

4. APS wrong about its "responsiveness" to the data requests

APS has conveniently claimed that "no aps.com logs were in existence for the Tool **during the timeframe** requested by Energytools, and GridX did not keep records of the rate recommendations that were given."

² Comm. Olson Letter Dated November 15, 2019 at: <https://docket.images.azcc.gov/E000003701.pdf>

Regarding the log records for customers who accessed the GridX tool, the Energytools report has stated on page 29 that APS provided the data for which "The dates range between **January 30, 2019** and November 1, 2019." Energytools also stated that "**a lack of data prohibited them**" from evaluating specific complaints enumerated in Commissioner Kennedy's December 13, 2019 letter. In short, was APS **unresponsive** in providing logs for the timeframe *prior* to the data-shift error (it had already copped to it starting in February 2019) — thereby limiting additional damage to itself for the time period *before* February 2019?

Nobody knows how or why APS would have the GridX log records available *after* January 30, 2019, but not *before*? We smell a rat and so should the Commission.

5. APS is wrong about "agreement" on improving the display

APS claims to have "agreed that the display on the website *could be* improved," thereby admitting to a lesser offense. The complainant had provided evidence that the display on the website and the app was just plain



WRONG — and not that it needed to be "improved." The screenshot here unequivocally showed that the weekday 2-3 PM off-peak hour was showing in **green** (on-peak) rather than in **blue** (off-peak).

Besides, there is zero contemporaneous documentation in the ACC complaints, either by APS or by the complainant, the need for the display to be "improved." Instead, APS simply **gaslighted** the complainant by trying to convince her that everything was correct and that it was her own "misunderstanding" to blame. The complainant never did buy APS's story, but gave up after being stonewalled and repeatedly rebuffed.

6. APS is wrong about the complaint being about the "website" only

APS has falsely claimed that the customer's complaint (Complaint No. 2019-160008) involved only "the display of information on the website." The complainant had clearly proved in July 2019, and again in September 2019 with highlighted screenshots for June 26, 2019 usage, that the data error was occurring both on the APS website (left screenshot) **and in the APS app** (right screenshot presented on page 1), likely as a result of the same defective data source.

7. APS is wrong about unsupported "correct" billing claim as refutation of the harm caused by the Tool

APS claims to have determined that "the customer was charged the correct amount for the on-peak window of 3pm - 8pm Monday through Friday." However, APS has failed to provide *any such evidence* supporting its claim. And, even if true, APS has already admitted to the data errors in interfacing with the meter data management system and inaccuracy due to its reliance on interval data. In short, charging a correct amount — even if true — does **not** refute either the admitted "integration error" causing a software glitch in the Tool or the harm to the ratepayers from being asked to switch to more expensive rate plans.

Given the growing concerns about APS's truthfulness as highlighted above, we urge the Commission to:

- 1) Compel APS to respond to the discrepancies above in its response in writing with evidence rather than simply issuing unsupported statements.**
- 2) Compel APS to produce web logs, all retention or engagement agreements and/or addendums, and all internal/external communication, including but not limited to all the documents, emails, encrypted or decrypted text messages, or any additional form of communication sent/received, meeting minutes, notes, memos, and phone logs related to the rate comparison tool software development, testing, implementation, maintenance, enhancements, bug fixes, and re-releases from August 2017 to February 2020.**